

**Before the
Federal Communications Commission DA 96-657
Washington, D.C. 20554**

In the Matter of)	MM Docket No. 96-104
)	
Southwestern Broadcasting Corporation)	File No. BRH-900315UC
)	
)	
For Renewal of License)	DOCKET FILE COPY ORIGINAL
for Station KLZK(FM))	
Brownfield, Texas)	

HEARING DESIGNATION ORDER

Adopted: April 25, 1996

Released: April 29, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) the captioned application for renewal of license filed by Southwestern Broadcasting Corporation. ("Southwestern"), licensee of FM Station KLZK, Brownfield, Texas, and (b) the results of an investigation into the station's silent status.¹

2. KLZK is licensed to serve Brownfield, Texas as a Class A FM station. The station has been off the air for seven years. In 1988, the station's previous licensee, Brownfield Broadcasting Corp. ("Brownfield"), informed the Commission that it suspended operations pending Commission action on its petition to upgrade its facilities to a C2 facility and the associated application to relocate KLZK's transmitter site. The rulemaking petition was granted² and Brownfield applied to implement the upgraded facilities in October, 1989. This proposal was later dismissed as unacceptable for filing.³

3. In 1990, Brownfield filed an application to assign the station's license to Southwestern. The transaction (File No. BALH-900223HF, granted May 4, 1990) was consummated on July 1, 1990. Southwestern did not address the matter of the station's silence until a January 6, 1993 request to remain silent. Noting Southwestern's failure to justify KLZK's continued silence, the Bureau informed Southwestern that its request would be held

¹The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See Moenkopi Communications, Inc., 8 FCC Rcd 3990 (1993).

²Report and Order in MM Docket 87-603. 3 FCC Rcd 6158 (1988).

³Letter to Southwestern Broadcasting Corp. (Ref. 8920-JAG), dated March 17, 1992.

in abeyance pending submission of a detailed timetable for resumption of KLZK's operations.⁴

4. On February 21, 1994, Southwestern replied that "it would not be fiscally wise" to put KLZK on the air as a Class A station since the licensed tower site was no longer available. Southwestern also stated that it would commence operations on Channel 282C2 "within six months" of the grant of an upgraded construction permit application, an application it promised to file simultaneously with a petition for rulemaking to resolve short-spacing problems involving LaMesa, Texas FM stations KMMX and KIOL. The rulemaking petition was filed April 14, 1994, but Southwestern did not file the promised Class C2 proposal. On February 15, 1996, Southwestern filed another request to remain silent, stating that all technical problems preventing implementation of its upgrade were resolved, and that it would file the appropriate application (FCC Form 301) "within the next week or so."⁵ No application has been filed.

5. The licensee's failure to return the station to the air since it acquired the facility almost six years ago raises substantial questions as to its capability and intent to resume broadcast operations. In view of the foregoing facts, the licensee's current request for special temporary authority fails to establish that causes beyond Southwestern's control have resulted in the facility's continued silence for this protracted period of time. Therefore, Southwestern is in apparent violation of Sections 73.1740⁶ and 73.1750⁷ of the Commission's Rules.

⁴Letter to James P. Riley (Ref. 1800B3-MFW), dated December 2, 1993.

⁵Southwestern's request refers to the Commission's modification to the FM Table of Allotments reallocating KIOL(FM)'s channel from LaMesa to Tahoka, Texas. Report and Order in MM Docket 95-58, 10 FCC Rcd 11018 (1995). This action enables KMMX(FM) to resolve its short-spacing problems by moving the station's transmitting facilities from its short-spaced temporary location at KIOL(FM)'s licensed site to a site fully-spaced to KLZK's referenced coordinates. Notice of Proposed Rulemaking in MM Docket 95-58, 10 F.C.C. Rcd 4945 n.4 (1995).

⁶Section 73.1740(a)(4) provides that

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the

6. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal of license application of KLZK(FM), Brownfield, Texas, IS DESIGNATED FOR HEARING at a time and location to be specified in a subsequent Order, upon the following issues:

- (1) To determine whether Southwestern Broadcasting Corporation has the capability and intent to expeditiously resume the broadcast operations of KLZK(FM), consistent with the Commission's Rules.
- (2) To determine whether Southwestern Broadcasting Corporation has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity

7. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

8. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, Southwestern Broadcasting Corporation.

allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

⁷Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

9. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the receipt of this Order a WRITTEN APPEARANCE stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau